



Attorney General

1275 WEST WASHINGTON

Phoenix, Arizona 85007

Robert K. Corbin

November 14, 1989

The Honorable Joe Albo, Jr.
Gila County Attorney
1400 E. Ash Street
Globe, Arizona 85501

Re: I89-095 (R89-107)

Dear Mr. Albo:

Pursuant to A.R.S. § 15-253(B), we have reviewed your August 11, 1989 opinion letter to Sue N. Myers, Superintendent of Pine Elementary School District regarding whether an elementary school district governing board (governing board) may establish a voluntary pre-ninth grade for pupils who have been promoted from the eighth grade.

We concur that a governing board does not have authority to retain a pupil who has been promoted from the eighth grade or to establish a grade between the eighth grade and high school.^{1/} We revise the other portions of your opinion.

^{1/}To the extent Ariz. Att'y Gen. Op. 179-265 opines that a school district may delay the graduation of a student meeting graduation requirements, we overrule it. On reconsideration we find no statutory authority which permits a school district to delay graduation for a student who has achieved the necessary credits for graduation. School districts have only such powers as are granted to them by the Legislature. Oracle School District No. 2 v. Mammoth High School District No. 88, 130 Ariz. 41, 43, 633 P.2d 450, 452 (App. 1981).

Although a governing board may not establish a pre-ninth grade, it does have the responsibility to develop criteria necessary for promotion from the eighth grade. A.R.S. § 15-341(A)(7) provides that a governing board shall:

Prescribe the course of study, subject to approval by the state board of education, and course of study and competency requirements and criteria for the promotion and graduation of pupils as provided in sections 15-701 and 15-701.01.

The State Board of Education prescribes the minimum course of study and competency requirements for promotion of pupils from the eighth grade. A.R.S. §§ 15-203(A)(15) and -701(A). A governing board may develop additional or high standards than those established by the State Board of Education.^{2/}

The initial decision on whether to retain or promote a pupil rests with the pupil's teacher who must make the determination based on the prescribed criteria. A.R.S. § 15-701(C) states:

A teacher shall determine whether to promote or retain a pupil in grade in a common school as provided in § 15-521, subsection A, paragraph 10 on the basis of the prescribed criteria. The governing board, if it reviews the decision of a teacher to promote or retain a pupil in grade in a common school as provided in § 15-342, paragraph 11, shall base its decision on the prescribed criteria.

^{2/}A.R.S. § 15-701(B) provides:

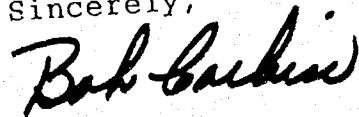
Pursuant to the guidelines which the state board of education develops, and prior to the 1986-1987 school year, the governing board of a school district shall prescribe criteria for the promotion of pupils from grade to grade in the common schools in the school district. These criteria may include such areas as academic achievement and attendance. The governing board may prescribe course of study and competency requirements for the promotion of pupils from the eighth grade which are in addition to or higher than the course of study and competency requirements which the state board prescribes.

The Honorable Joe Albo, Jr.
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Therefore, we conclude that a governing board has the discretion to prescribe criteria relating to the retention of pupils in an elementary school and to prescribe standards for the promotion of pupils from the eighth grade which are in addition to or higher than State Board of Education standards.

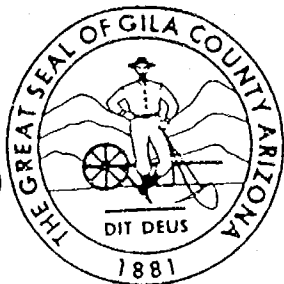
The governing board should exercise caution in prescribing criteria and additional or higher standards by providing ample notice to pupils of new promotion criteria and standards. In addition, the criteria and standards must be reasonably related to the educational goals of the school district and be neither arbitrary or discriminatory. See Ariz. Att'y Gen. Op. 185-065 and Dick v. Cahoon, 84 Ariz. 199, 325 P.2d 835 (1958).

Sincerely,



BOB CORBIN
Attorney General

BC:LSP:bl



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Gila County Attorney

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Globe, Arizona 85501

(602) 425-3231
EXT. 298

Joe Albo Jr.

August 11, 1989

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Parad

Sue N. Myers, Superintendent
Pine Elementary School
P.O. Box 1150
Pine, AZ 85501

Dear Ms. Myers:

You requested an opinion as to whether the Pine Elementary School could create a pre-ninth grade, for those situations in which the students, their parents, and the faculty all agree that the child should spend an additional year in junior high in order to remedy any academic deficiencies or socialization problems the child may have prior to entering high school.

Rather than creating a separate grade comprised of children who have graduated from eighth grade, I would perceive your program as a year long class, open only to those students who have already completed the requirements for graduation from eighth grade and who have both parental and teacher approval to be in the class. In this way, the students who choose to take this particular elective will not have graduated from the eighth grade, and will have the option of remaining in the school until this socialization and academic strengthening program has been completed.

As your letter points out, A.R.S. §15-342.3 allows the governing board discretion to make such separation of groups of pupils as it deems appropriate, while A.R.S. §15-341.7 allows the school to prescribe a course of study subject to approval by the State Board of Education. These statutes provide the school with the legal authority to create an elective class such as you have described. I do not believe that you would wish to make this class part of a more stringent course of study necessary for graduation under §15-701 since, as I perceive it, you wish this opportunity to be made available only to those students whose parents and teachers agree that it would be in the child's best interest to have the additional time prior to going to high school.

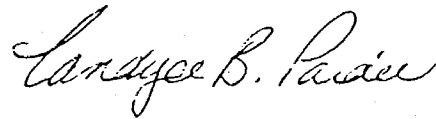
Op. Attv Gen. I79-265, which you provided to this office, indicates that a child is not required to graduate when the child has completed all the necessary credits for graduation. This opinion would support the idea of having your "pre-ninth grade" as an elective class available to those students who could have graduated from eighth grade had they so chosen but who instead wished to attend the eighth grade for an additional year under the

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auspices of the class you have described. If the State Board of Education approves the course of study described, then this office sees no problem with your school implementing it as an elective limited to those students who meet the pre-enrollment requirements outlined by the District.

A copy of this opinion is being sent to the Attorney General for his review pursuant to A.R.S. §15-253. If no action is taken by that office within 60 days, the opinion will be deemed confirmed.

Sincerely,



Candyce B. Pardee
Deputy County Attorney

CBP:pt



PINE ELEMENTARY SCHOOL

DISTRICT 12

P.O. BOX 1150 PINE, ARIZONA 85544 476-3283

March 21, 1989

Candy Pardee
Gila County Attorney
Gila County Office Building
Globe, Arizona 85501

Dear Candy:

The faculty of Pine Elementary School is interested in providing a pre-ninth grade. Students would be admitted to this grade after graduation from 8th grade only if the student, the parents of the student, and the teacher all agreed that it would be advantageous for the student to spend an additional year in junior high. It is the thought of our teachers that an extra year in junior high, with a program especially designed to build the student's academic strengths and remedy academic deficiencies while scheduling experiences to broaden horizons, would allow a child to mature physically, mentally, and emotionally, and thus be ready to take advantage of all that high school has to offer. Parents would be required to spend time at the school each week and be closely involved with the total program.

Our question. Can we legally do this?

~~I have talked to Ruth Koester of the ASBA and she has given us~~
some suggestions, but agrees with us that we need a ruling on this question.

ARS 15-342 gives a Governing Board discretion to make such separation of groups or pupils as it deems advisable. Would this give the Governing Board the right to let a few chosen students graduate, but allow them to stay on at school for an additional year in a pre-ninth grade?

ARS 15-701 allows the State Board to prescribe a minimum course of study, but a Governing Board can be more stringent as it sees fit. Would this apply? ARS 15-715 provides special assistance for K-3. There is no similar statute for older students, is there?

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Ruth also sent a copy of a 1979 Attorney General's Opinion
which you may wish to consider.

I appreciate your help.

Sincerely,

Sue N. Myers

Sue N. Myers
Superintendent
SNM:kw

cc:Ruth Koester
ASBA

Fred Stidham
Pine School